

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Massachusetts
Name Raul P. Gonsalves	Prisoner No. W68842	Case No.
Place of Confinement Massachusetts Correctional Institute Shirley Medium.		
Name of Petitioner (include name under which convicted) Raul P. Gonsalves		<i>05-100</i> <i>Referred to New Magistrate Judge</i> Name of Respondent (authorized person having custody of petitioner) Michael Thompson, v. (Superintendent MCI Shirley Med.), Thomas Rhiley, (Attorney General of Mass.)
The Attorney General of the State of: Massachusetts		

PETITION

- Name and location of court which entered the judgment of conviction under attack Barnstable Superior Court, 3195 Main Street, P.O. Box 425, Barnstable, MA 02630.
- Date of judgment of conviction December 5th, 2000.
- Length of sentence Four to Five Years.
- Nature of offense involved (all counts) One Count of Receiving Stolen Motor Vehicle, in violation of Massachusetts General Laws, c. 266, § 28.
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court Appeals Court of Massachusetts
- (b) Result Conviction was Affirmed
- (c) Date of result and citation, if known November 21, 2002, Com. v. Gonsalves, 56 Mass.App.Ct. 506 (2002).
- (d) Grounds raised (See attached paper, grounds raised)

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court Massachusetts Supreme Judicial Court
- (2) Result Application for Further Review was Denied.

(3) Date of result and citation, if known January 7th, 2003, Docketed under FAR-13076.

(4) Grounds raised that an off-road vehicle is not a "motor vehicle" under the statute charged, and Inneffective Assistance of Counsel.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Barnstable Superior Court
- (2) Nature of proceeding Motion for New Trial
- (3) Grounds raised Inneffective Assistance of Counsels, Illegal Search & Seizure, the Petitioner stands convicted under the wrong

Statute in violation of the Due Process Clause of the Fourteenth Amendment, and Insufficient Evidence.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Denied without any written findings of fact.

(6) Date of result July 7th, 2003.

(b) As to any second petition, application or motion give the same information:

(1) Name of court Supreme Judicial Court, Suffolk County, Single Justice.

(2) Nature of proceeding Petition for Extraordinary Relief Pursuant to M.G.L.c. 211, § 3.

(3) Grounds raised That the appeals court decision in the petitioners direct appeal was in error, that an off-road vehicle is not a motor vehicle under the statute charged and that statute as applied violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Denied

(6) Date of result Denied by single justice on February 24, 2004, Appeal to Full bench was denied July 22, 2004.

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- ☒ (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- ☒ (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ☒ (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: The Commonwealth failed to preserve exculpatory evidence for defense inspection.

Supporting FACTS (state *briefly* without citing cases or law): Petitioner was granted a motion to inspect the evidence. When the Petitioner's investigator went to the police station to inspect. The evidence was nowhere to be found. The investigator was directed to speak to officer Marken, he stated that it had been picked up by a private concern. The defense was deprived of an opportunity to inspect the evidence and take any photo's. (See Argument A of Petitioner's Memo).

B. Ground two: Ineffective Assistance of Counsels

Supporting FACTS (state *briefly* without citing cases or law): Both the trial counsel and the Appeals counsel failed to raise a viable claim of illegal search and seizure. Appeals counsel also incorrectly argued the statute issue in the Petitioner's direct appeal. (See argument B of Petitioner's Memo)

C. Ground three: The statute as applied by the State Court is vague

Supporting FACTS (state *briefly* without citing cases or law): The statute as applied by the State Court is vague and overbroad because it fails to establish what a "motor vehicle" is and it allows the police and prosecutor to proceed with selective law enforcement, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. (See Argument C of Petitioner's Memo)

D. Ground four _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Richard G. Barry, 4728 Falmouth Road,
Cotuit, Massachusetts 02635

(b) At arraignment ~~xxxxxx~~ Richard Barry